Airway Cleaners, LLC *and* United Construction Trades and Industrial Employees Union (UCTIE), Local 621, Petitioner *and* Local 660, United Workers of America, Intervenor *and* Local 32BJ, Service Employees International Union, Intervenor. Case 29–RC–099871

April 15, 2015

DECISION ON REVIEW AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND MCFERRAN

On June 21, 2013, the Regional Director for Region 29 issued a Decision and Direction of Election in two units of the Employer's aircraft and building cleaning employees at terminal 8, John F. Kennedy International Airport (JFK). The Regional Director found that the Employer's current collective-bargaining agreement with Local 660, United Workers of America (Local 660) (the current CBA) did not bar the petition because the petitioned-for employees were not an accretion to the existing bargaining unit.

Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer and Local 660 filed timely requests for review.[1] The Employer contends that the Regional Director failed to properly address its contract-bar argument and find that the current CBA bars the petition. Local 660 contends that the Employer simply expanded the existing collective-bargaining unit and, thus, that the current CBA bars the petition. Intervenor Local 32BJ, Service Employees International Union (Local 32BJ) filed an opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[2]

The Employer's and Local 660's requests for review are granted as they raise substantial issues regarding the Regional Director's finding that the current CBA does not bar the petition.

Having carefully considered the entire record in this proceeding, we find that the Regional Director's application of accretion analysis was not appropriate in this case. We further find that the current CBA bars the petition because the petitioned-for employees are included in the existing bargaining unit. Therefore, we shall dismiss the petition.

I. BACKGROUND

The Employer provides cleaning and maintenance services at various airports, including JFK. Local 660 represents a bargaining unit of the Employer's employees at JFK. The parties' current CBA is effective from September 1, 2012, to August 31, 2015. Its recognition clause states, "The Employer hereby recognizes [Local 660] as the exclusive representative of all full-time and regular part-time employees employed at JFK Airport excluding guards, supervisors, office employees, foremen, salesmen, and executives employed at JFK Airport." Exhibit A of the current CBA lists job classifications and their hourly rates as of September 1, 2012. The listed job classifications are aircraft cleaners, drivers, building cleaners, floor waxers, machine operators, hostesses, bartenders, and window cleaners.

Airlines, terminal operators, and other entities periodically issue requests for proposals for cleaning contracts at JFK. The Employer and other cleaning companies submit competing bids. The Employer's customers can cancel contracts with 30-days notice. As a result, the Employer's work force shrinks and expands based on its ability to obtain and retain contracts. Thus, since the Employer and Local 660's predecessor executed their first CBA in 2003, the Employer has lost contracts in terminals 2 and 3 and acquired contracts in terminals 4, 7, and 8. The Employer operates under the assumption that employees employed to fulfill newly acquired contracts are included in the existing bargaining unit, and it applies the current CBA to those employees. When the Employer acquires a new contract, it can either hire new employees or transfer existing employees from other terminals.

When the current CBA became effective, the Employer was already providing services at JFK in terminals 1, 4, 7, and 8 and in various cargo buildings under several different contracts, and the employees who provided the-

[1] Although the documents that the parties submitted as requests for review were in the form of exceptions, we find that they satisfy the requirements of Sec. 102.67(d) of the Board's Rules and Regulations, and no party contends otherwise.

[2] The Employer also filed with the Regional Director a motion for reconsideration of the Decision and Direction of Election, contending that the petition should be dismissed because the Employer is subject to the Railway Labor Act (RLA). Pursuant to Sec. 102.67 of the Board's Rules and Regulations, the Regional Director transferred this case to the Board to determine whether it has jurisdiction over the Employer. On August 23, 2013, the Board requested that the National Mediation Board (NMB) review the record in this case and determine the applicability of the RLA to the Employer. On September 11, 2014, the NMB—with one member dissenting in relevant part—decided that the Employer is not subject to the RLA. *Airway Cleaners, LLC*, 41 NMB 262 (2014). On the basis of the record facts, and in view of the substantial deference given to the NMB's opinion, we concur with the findings of the NMB. Accordingly, we find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act, and that it will effectuate the policies of the Act to assert jurisdiction. We therefore deny the motion for reconsideration.

se services were included in the existing bargaining unit. As relevant here, in terminal 8 the Employer employed four or five employees to provide overnight carpet cleaning services for American Airlines and had a contract to clean aircraft for Qatar, Air Berlin, Finn Air, and Royal Jordanian.

Since the current CBA became effective, the Employer has begun to provide services for American Airlines in terminal 8 under two new contracts—aircraft cleaning services, beginning in approximately late October to early November of 2012, and building cleaning services, beginning on March 1, 2013.

On March 8, 2013, United Construction Trades and Industrial Employees Union (UCTIE), Local 621 filed a petition under Section 9(c) of the Act, seeking to represent "[a]ll full and part-time cleaners, lead persons, [sic] maintenance staff of terminal and Airplanes at Terminal 8 JFK." A motion by Local 32BJ to intervene was granted based on a showing of interest among employees in the petitioned-for unit. Because the Regional Director found that the Employer's new terminal 8 employees were not an accretion to the existing bargaining unit, he directed elections in an "Aircraft cleaning unit" and a "Building cleaning (janitorial) unit." The elections were held on July 23, 2013, and the ballots were impounded.

II. ANALYSIS

Contrary to the Regional Director, we find that accretion analysis is not appropriate in this case to determine whether the Employer's new terminal 8 employees are included in the existing bargaining unit. "It is axiomatic that when an established bargaining unit expressly encompasses employees in a specific classification, new employees hired into that classification are included in the unit." *Gourmet Award Foods, Northeast*, 336 NLRB 872, 874 (2001), enfd. No. 02–1086, 2005 WL 23349 (D.C. Cir. 2005). Accretion analysis is not appropriate in such a situation. Ibid.

These principles apply here. The current CBA's recognition clause, read in light of the exhibit A wage schedule, clearly covers the new aircraft cleaners, building cleaners, and drivers who were hired to fulfill the Employer's new terminal 8 contracts with American Airlines.[3] The current CBA does not contain any jurisdictional limitation that might prevent it from being applied to those employees. When the Employer acquired the new terminal 8 contracts with American Airlines and hired its new terminal 8 employees, it already employed, in terminal 8 and other terminals at JFK, employees who worked in the same job classifications as the new terminal 8 employees. Those employees were included in the existing bargaining unit, and the current CBA was applied to them. In the past, when the Employer acquired new contracts, the new aircraft cleaners, building cleaners, and drivers who were hired to fulfill those new contracts also were included in the existing bargaining unit. In this case, the Employer simply expanded the existing bargaining unit, as it has done in the past, in order to fulfill its new terminal 8 contracts with American Airlines. Therefore, the Employer's new terminal 8 employees, whom Local 621 and Local 32BJ seek to represent, are included in the existing bargaining unit and are covered by the current CBA. Accretion analysis is therefore inappropriate in this case.

Because the Employer's new terminal 8 employees are included in the existing bargaining unit, the current CBA bars the petition.[4]

ORDER

The petition is dismissed.

Dated, Washington, D.C. April 15, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] See *Tarmac America, Inc.*, 342 NLRB 1049, 1049–1050 (2004) (focusing on "the bargaining unit description in the parties' collective-bargaining agreement, *including* [the] appendix A [wage schedule]," to determine if an employee belonged within the existing bargaining unit) (emphasis added).

[4] Contrary to Local 621's contention at the hearing, the record establishes that the current CBA has been applied to the Employer's new terminal 8 employees. The other contract bar requirements established in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958), and *General Extrusion Co. Inc.*, 121 NLRB 1165 (1958), have been met here as well.

Member Miscimarra agrees that the facts support application of a contract bar given that the Employer and Local 660 (and Local 660's predecessor) for many years have maintained collective-bargaining agreements applicable to the JFK Airport as a whole, although he believes an accretion analysis might be appropriate where, for example, a collective-bargaining agreement purported to apply to a broader geographic area, to noncontiguous operations, or substantially beyond the preexisting bargaining unit. Additionally, although the Board traditionally has afforded substantial deference to decisions of the NMB regarding RLA jurisdiction, see, e.g., *Federal Express Corp*., 317 NLRB 1155 (1995), Member Miscimarra finds it unnecessary to decide among the varied NMB opinions regarding the jurisdictional question raised by the Employer's motion for reconsideration (see fn. 2, supra) because dismissal of the election petition—which the Board here unanimously agrees is appropriate—would also be the result in the absence of NLRB jurisdiction.